

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
ALAMEDA-CONTRA COSTA)	
TRANSIT DISTRICT)	
Private Land Mobile Stations KBY746, WFS916,)	FCC File Nos. A031088, A031089
and KM8643)	
)	
RMS SAN FRANCISCO)	
Private Land Mobile Station WPML959)	FCC File No. A024182
)	
LESTER ETTINGER)	FCC File No. D115306
)	
JOHN H. GRONEMEIER)	FCC File No. A027127

ORDER

Adopted: December 7, 2000

Released: December 11, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On December 16, 1998, Alameda-Contra Costa Transit District (AC Transit) filed a Petition for Emergency Relief (Petition).¹ AC Transit alleges that we erroneously canceled its licenses for Stations KBY756, WFS916, and KM8643. It requests that we reinstate the licenses, dismiss the pending applications for the same frequencies, and cancel licenses already granted for those frequencies. For the reasons set forth herein, the Petition is dismissed in part.

II. BACKGROUND

2. AC Transit is a public transportation district that provides bus service to over 390 square miles in Alameda County and Contra Costa County, California, and from those areas across the San Francisco-Oakland Bay Bridge to the City of San Francisco.² AC Transit operates 800 vehicles and carries approximately 230,000 passengers a day, including 60,000 school children.³ AC Transit held licenses for a land mobile radio system, including Stations KBY756, WFS916, and KM8643. All three stations were authorized to use the same six frequency pairs in the 470-512 MHz band: 490/493.4625, 490/493.5125, 490/493.5625, 490/493.6125, 490/493.6625 and 490/493.7125 MHz.

3. On September 29, 1995, AC Transit filed renewal of license applications for Stations

¹ Alameda-Contra Cost Transit District Petition for Emergency Relief (filed Dec. 16, 1998) (Petition).

² *Id.* at 3

³ *Id.*

WFS916 and KM8643, which were scheduled to expire on October 2, 1995.⁴ On October 23, 1995, the applications were returned to AC Transit for additional information.⁵ AC Transit resubmitted the applications, with the requested information, on March 7, 1996.⁶ AC Transit states that it received no further correspondence regarding these licenses.⁷ On June 5, 1996, the licenses were deleted from the Commission's licensing databases.⁸

4. On May 5, 1997, AC Transit filed an application to consolidate the licenses for Stations WFS916 and KM8643 under the license for Station KBY756.⁹ AC Transit also sought to renew the license for Station KBY756 at that time, even though it was not scheduled to expire until March 18, 1998.¹⁰ Our records indicate that this application was returned on October 20, 1997, with a request that AC Transit clarify whether a seventh frequency from an unrelated AC Transit license, 490.7625 MHz, should be included in the consolidation. AC Transit states, however, that it never received the October 20, 1997, return notice, and therefore never responded.¹¹ AC Transit also states that it never received a renewal notice for Station KBY756.¹² The license for Station KBY756 expired on March 18, 1998, and was later deleted from the Commission's licensing database.

5. With Station KBY756 no longer in the Commission's database, other parties applied for licenses on the subject six frequency pairs. On September 14, 1998, a license was issued to RMS San Francisco (RMS), as Station WMPL959, for frequency pairs 490/493.5125 and 490/493.7125 MHz. On September 25, 1998, John H. Gronemeier (Gronemeier) filed an application for frequency pairs 490/493.5125, 490/493.5625, 490/493.6125, 490/493.6625 and 490/493.7125 MHz.¹³ On October 15, 1998, Lester Ettinger (Ettinger) filed an application for frequency pair 490/493.4625 MHz.¹⁴

6. Subsequently, AC Transit began to experience substantial interference on 490/493.5125 MHz, and also was contacted by RMS San Francisco (RMS) about interference RMS was receiving from

⁴ FCC File Nos. R90858, R90859.

⁵ Application Return Notice (Oct. 23, 1995). The Application Return Notice stated, "It appears your mobile call sign was issued wrong. Please list the geographical coordinates for the mobile area of operation. Please return both applications together for processing."

⁶ AC Transit stated that the delay in responding was caused by the retirement of the employee who handled such matters. Letter from Steve Montoya, AC Transit, to FCC (dated Mar. 4, 1996).

⁷ Petition at 4.

⁸ Pursuant to 47 C.F.R. § 90.141 (1995), applicants had 60 days to resubmit an application which was returned by the Commission. Because AC Transit did not respond for six months, the Commission could not accept the late filing and deleted the licenses.

⁹ FCC File No. D079895 (filed May 5, 1997).

¹⁰ *Id.*

¹¹ Petition at 5.

¹² *Id.* at 6.

¹³ FCC File No. A027127 (filed Sept. 25, 1998).

¹⁴ FCC File No D115306 (filed Oct. 15, 1998).

AC Transit.¹⁵ Upon investigation, AC Transit learned that the licenses for its Stations KBY756, WFS916, and KM8643 had expired.¹⁶

7. On December 11, 1998, AC Transit requested that the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) suspend processing of the pending Ettinger and Gronemeier applications, pending its submission of additional information.¹⁷ On December 16, 1998, AC Transit requested special temporary authority to continue its previously licensed operations.¹⁸ On December 16, 1998, AC Transit also filed the Petition. AC Transit also filed applications to reauthorize channels 490/493.4625, 490/493.5625, 490/493.6125, 490/493.6625,¹⁹ 490/493.5125 and 490/493.7125 MHz.²⁰

8. The Branch dismissed the Ettinger application on December 12, 1998²¹ because the proposed site was too close to a protected television station.²² Gronemeier's application was dismissed on June 4, 1999,²³ for failure to satisfy applicable loading requirements.²⁴ On June 9, 1999, the Branch granted the Petition in part and denied it in part. Specifically, the Branch informed AC Transit that it would grant its application with respect to the channels it requested which were not already licensed to RMS: 490/493.4625, 490/493.5625, 490/493.6125, and 490/493.6625 MHz.²⁵ The Branch, concluded, however, that it had no basis or justification to revoke, cancel, or modify RMS's license.²⁶ The Branch decided that the Petition was too late to be considered a timely-filed petition for reconsideration of the grant to RMS,²⁷ and therefore dismissed the Petition in part.²⁸ On July 2, 1999, the Branch, on its own

¹⁵ Petition at 3-4.

¹⁶ *Id.* at 4.

¹⁷ Letter from Robert M. Gurss, Counsel for AC Transit, to Mary M. Shultz, FCC (dated Dec. 11, 1998).

¹⁸ Letter from Robert Fernandez, AC Transit to Mary M. Shultz, FCC (dated Dec. 16, 1998). The request was granted on December 21, 1998.

¹⁹ FCC File No. A031088 (filed Dec. 22, 1998).

²⁰ FCC File No. A031089 (filed Dec. 14, 1998).

²¹ Ettinger's application was dismissed pursuant to a computer generated letter dated December 12, 1998 (FCC File No. D115306).

²² *See* 47 C.F.R. § 90.307.

²³ Letter from Terry Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, to John H. Gronemeier (dated June 4, 1999).

²⁴ *See* 47 C.F.R. § 90.313.

²⁵ Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Robert M. Gurss, Counsel for AC Transit (June 9, 1999) (Branch Letter). The authorizations were granted on June 15, 1999.

²⁶ *Id.* at 1.

²⁷ *See* 47 C.F.R. § 1.106(f).

²⁸ Branch Letter at 1.

motion, set aside the portion of the June 9, 1999 letter which dismissed the Petition in part and returned the Petition to pending status.²⁹ The two RMS channels have since been the subject of extensive negotiations. It is our understanding that negotiations, however, recently ended unsuccessfully. Thus, the portion of the Petition addressing RMS's authorization is still pending, and is the subject of this action.

III. DISCUSSION

9. As noted above, AC Transit's Petition already has been granted by the Branch with respect to frequency pairs 490/493.4625, 490/493.5625, 490/493.6125 and 490/493.6625 MHz. We now address the remainder of the Petition relating to frequency pairs 490/493.5125 and 490/493.7125 MHz. AC Transit requests that we set aside RMS's license for Station WPML959 and relicense AC Transit for frequency pairs 490/493.5125 and 490/493.7125 MHz.³⁰ AC Transit's Petition is essentially a petition for reconsideration of the expiration of its licenses on October 2, 1995, and March 18, 1998, and of the license grant to RMS on September 14, 1998. Therefore, AC Transit's petition should have been filed no later than thirty days after public notice of RMS's authorization.³¹ Furthermore, AC Transit failed to file a request for a waiver of the Commission's rules to accept a late-filed reconsideration petition. AC Transit's December 16, 1998 Petition therefore is untimely, and is dismissed accordingly.

10. Moreover, AC Transit has not set forth sufficient grounds warranting grant of the requested relief. AC Transit states that it never received any notice from the Commission prior to the expiration of its license for Station KBY756 on March 18, 1998, and did not receive, by mail, a renewal of license application.³² These circumstances, however, did not justify AC Transit's failure to renew its license. Regardless of whether the renewal notices were received, each licensee is responsible for knowing the expiration date of its licenses and submitting a renewal of license application in a timely manner.³³ Accordingly, "failure of a licensee to receive a [renewal form] from the Commission is no excuse for failure to file a renewal application."³⁴ Consequently, that AC Transit allegedly never received the October 27, 1997 application return notice³⁵ is not a sufficient basis for requiring return of the subject channels to AC Transit.

IV. CONCLUSION

11. The Branch already granted AC Transit's Petition with respect to frequency pairs:

²⁹ Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Robert M. Gurss, Counsel for AC Transit (July 2, 1999).

³⁰ Petition at 7.

³¹ See 47 C.F.R. § 1.106(f).

³² Petition at 6.

³³ See Tampa Electric Company, *Order*, 14 FCC Rcd 21344, 21348 ¶ 9 (WTB PSPWD 1999) (Tampa Electric) (citing, Daniel R. Goodman, Dr. Robert Chan, Petition for Waiver of Section 90.633(c) and 1.102 of the Commission's Rules, *Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21944, 21972-73 ¶ 53 (1998) (Goodman)).

³⁴ Tampa Electric, 14 FCC Rcd at 21349 ¶ 9 (citing Goodman, 13 FCC Rcd at 21973 ¶ 53; Nevada Power Company, *Order on Reconsideration*, 14 FCC Rcd 17812, 17815 ¶ 5 (WTB PSPWD 1999)).

³⁵ Petition at 5.

490/493.4625, 490/493.5625, 490/493.6125, and 490/493.6625. With respect to frequency pairs 490/493.5125 and 490/493.7125, however, we dismiss the Petition as an untimely petition for reconsideration. Moreover, we conclude that AC Transit has failed to demonstrate that set aside, revocation or modification of RMS's authorization for 490/493.5125 and 490/493.7125 is warranted under these circumstances.

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the DISMISSED as it relates to the licenses held by RMS San Francisco.

13. IT IS FURTHER ORDERED that the special temporary authorization for Alameda-Contra Costa Transit District to operate on 490/493.5125 and 490/493.7125 MHz is CANCELLED as of thirty days from the release of this *Order*. Thus, Alameda-Contra Transit District shall cease operation on such frequencies within thirty days from the release of this *Order*, unless other arrangements are made with RMS San Francisco regarding such operation.

14. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau